IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

WEDNESDAY, THE 5TH DECEMBER 2007 / 14TH AGRAHAYANA 1929

CRL.A.No. 2046 of 2007()

CRLP.1027/2007 Dated 15/10/2007
CC.844/2006 of JUDL.MAGISTRATE OF FIRST CLASS COURT, TIRUR
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APPELLANT: COMPLAINANT

V.P.SAINUDHEEN HAJI
S/O. ABDUL KADER MUSALIAR
VALIYA PARAMBIL HOUSE, VANIYANNUR
P.O. IRINGAVOOR, TIRUR-676 103.

BY ADV. SRI.P.SANJAY
SMT.A.PARVATHI MENON

RESPONDENTS: ACCUSED & STATE
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1. M.V.MURUKESH
S/O. VELAYUDHAN (LATE)
NAMBAZHIKATTIL HOUSE PO, KAKASSERY
(VIA) CHITTATTUKARA, THRISSUR.

2. STATE OF KERALA REPD.BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM.

BY ADV. SRI. P. RAVEENDRA BABU, PUBLIC PROSECUTOR

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON 05/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

V. RAMKUMAR , J

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CRL.A. NO. 2046 OF 2007 A

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Dated this the 5th day of December, 2007.

JUDGMENT

Since the 1st respondent/accused did not appear before the court below and the impugned judgment dated 15.09.2007 was passed in the absence of the accused before the court below, notice to the 1st respondent/accused is dispensed with in this appeal.

2. The appellant is the complainant in C.C. No. 844/2006 on the file of the Judicial First Class Magistrate, Tirur for an offence punishable under Section 138 of the Negotiable Instruments Act, 1881 involving a cheque for a sum of Rs.6,50,000/-. Apart from the fact that there is a factual mistake in the judgment of the court below in the observation that there was no representation on 21.04.2007 which is demonstrably wrong since the diary extract produced as Annexure A1 shows that there was representation on behalf of the appellant, the acquittal of the accused under Section 256(1) Cr.P.C even before

the appearance of the accused was unwarranted. If the complainant was either absent or had failed to take steps to pay process for the further progress of the complaint, the Magistrate could have dismissed the complaint under Section 204(4) Cr.P.C. The order of acquittal is accordingly set aside and C.C. No. 844/2006 will stand restored to file. The appellant shall appear before the court below without any further notice on **02.01.2008**. By that time, he shall have taken all necessary steps for the further progress of the case.

The Cr. Appeal is disposed of as above.

V. RAMKUMAR, JUDGE.

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